IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Smt. Sarla Devi Vs. Manoj Yadav
(D.B. Civil Misc. Appeal No.1151/2002)

D. B. Civil Misc. Appeal under Sec.19 of the Family Courts Act,1984 against the order dated 8-4-2002 in Case No.225/2002 passed by Sh. Kailash Chand Jain, RHJS, Judge Family Court No.1, Jaipur.

Date of Judgment: February 05, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE DR. JUSTICE VINEET KOTHARI

Dr. Bharti Sharma, for the appellant.

Mr. V.R.Bajwa, for the respondent.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Challenge in the instant appeal is to the judgment and decree dated April 8, 2002 of the learned Family Court No.1, Jaipur whereby the petition of the respondent husband seeking divorce from the appellant was allowed.

2. In the petition filed under section 13 of the Hindu Marriage Act it was averred by the respondent husband that after the death of his first wife he entered into second marriage with the appellant on June 28, 1998. The appellant wife thereafter lived with him at Jaipur only for 7-8 months between the period from June 29, 1998 to July 15, 2000. During this period the appellant wife ill treated him and without his consent left the house. She was under the influence of relatives of his earlier wife Poonam who had already expired. The respondent husband alleged that the appellant wife

lodged FIR at Police Station Sada making false allegations of demand of dowry. However with the intervention of SP the compromise took place on April 28, 2000 and both started living at Galta Gate in a rented room, but again on June 27, 2000 she left the house of respondent husband and took a sum of Rs.10,000/- and ornaments. On instituting the report with the police she came back on July 1, 2000 and lived with the respondent till July 15, 2000 and went back. Despite sincere efforts made by the respondent she did not agree to join the company of respondent. Therefore on the ground of cruelty and desertion the respondent prayed for the decree of divorce.

3. The notices were issued to appellant wife but she did not appear in the court and ex-parte proceedings were initiated against the appellant. Thereafter on November 23, 2001 the appellant appeared in the court and the ex-parte proceedings were dropped. But again due to non appearance of the appellant she was proceeded ex-parte. The respondent examined himself and his father and closed the evidence. On the basis of the evidence of the respondent husband ex-parte decree came to be passed as indicated above.

4. We have heard the submissions advanced before us and scanned the material on record.

5. As per the scheme of the Family Courts Act,1984 (for short `the Act') the Family Courts are aimed to function in an informal way, since the parties are not aware with the legal complexities and their effects. Section 10 of the Act deals with general procedure and powers of the Family Court. It reads as under:-

> “10. Procedure generally:-
> (1) Subject to the other provisions of this Act and the rules, the

> provision of the Code of Civil Procedure,1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings other than proceedings under Chapter IX of the Code of Criminal Procedure,1973 (2 of 1974) before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a Civil Court and shall have all the powers of such court.
> (2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure,1973 (2 of 1974) or the rules made thereunder shall apply to the proceedings under Chapter IX of that Code before a Family Court.
> (3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject matter of the suit or proceedings or at the truth of the facts alleged by one party and denied by the other."

A look at the afore quoted provision goes to show that the Family Court is expected to adhere to simple and practicable procedure, either, in combination of or any of the procedure laid down in Section 10. Sub rule (3) also confers powers on the Family Court to evolve its own procedure in bringing about settlement of matters before it and finding the truth of the disputed facts in matters before it, frees it from the shackles of rigid rules of procedure by which ordinary courts are bound.

6. Section 13 of the Act prescribes a restriction on the parties to engage lawyers to represent their cases in the Family Court. The Law makers intended to keep the proceedings in the Family Court simple, informal and non-technical to achieve the main objective of the enactment. In that perspective, the entire procedure is aimed at simplification of procedure.

7. Since the appellant wife did not have chance to contest the case as she

was proceeded ex-parte because of her non-appearance, we in the interest of justice provide one more opportunity to her to file written statement and adduce evidence.

8. For these reasons we allow the appeal and set aside the impugned judgment April 8, 2002 of learned Family Court No.1, Jaipur. We remit the case to learned Family Court No.1, Jaipur for deciding the matter afresh after providing opportunity to adduce evidence to appellant Smt. Sarla Devi. The parties are directed to appear before the Family Court No.1, Jaipur on February 26, 2007 for seeking further instructions. Learned Family Court is expected to dispose of the matter as expeditiously as possible preferably within three months thereafter. The appellant shall be at liberty to move application under the proviso to Section 13 of the Family Court Act before the Family Court seeking appointment of Amicus Curiae.

(Vineet Kothari),J. (Shiv Kumar Sharma)J.

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